

## FREQUENTLY ASKED QUESTIONS ABOUT QUASI-JUDICIAL TOWN BOARD OF TRUSTEES PROCEEDINGS

Interpreting and applying constitutional due process (fair hearing) requirements, state and federal courts have characterized certain Town Board of Trustees decisions as legislative and others as "quasi judicial" and have required certain procedures for "quasi judicial" hearings. These frequently asked questions and responses to those questions provide a general and brief explanation of those procedures.<sup>1</sup>

### What Does "Legislative" Mean?

The Town Board of Trustees normally operates as a policy-making body. In that capacity, it gathers information at public hearings, from individual conversations with citizens and others, from memorandum prepared by Town staff, and from other potential sources. The Town Board then implements a policy, based on the information it has gathered, by enacting an ordinance. This it is a legislative process, by which the Town Board creates Town-wide policy that operates prospectively from the effective date of the ordinance. For example, when the Town Board enacts an ordinance setting leash law requirements for dogs off of private property, it is acting in its policy-making, or legislative capacity.

### What Does "Quasi-Judicial" Mean?

Occasionally, the Town Board of Trustees acts in an adjudicatory, or "quasi-judicial", manner. In that capacity, the Town Board of Trustees operates, not as a legislature, but more like a court. In a quasi-judicial proceeding, the Town Board is not setting new policy, but applying the standards in an existing ordinance, statute or regulation to facts presented at a hearing, similar as to how a judge would act. In other words, much like a court would at a trial, the Town Board is applying the law to the facts gathered at the public hearing to arrive at its decision. Quasi-judicial proceedings usually only involve individual properties and are not effective Town-wide.

For example, when the Town Board hears a land use application on a specific property or development, it is generally operating in its quasi-judicial, or adjudicatory, capacity.

### What Types of Applications Are Quasi-Judicial?

Determining whether a particular Town Board of Trustees decision involves legislative or quasi-judicial action sometimes requires analysis of court decisions. However, "site-specific" land use decisions (including re-zoning)<sup>2</sup> are generally quasi-judicial. Area-wide rezoning, on the other hand, is generally legislative<sup>3</sup>. "Other quasi-judicial matters include subdivision approval, special use reviews, and variances."<sup>4</sup>

### How Do Quasi-Judicial Rules Affect the Hearing Process?

In making quasi-judicial decisions, due process (a constitutionally guaranteed fair procedure) generally requires that the decision-maker (Town Board of Trustees) only consider evidence and testimony that it receives at the public hearing on the matter. That testimony and evidence make up

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<sup>1</sup> The Erie Town Attorney prepared this material for general public information. When prepared, it was a concise *summary* and *paraphrase* of applicable rules and court decisions. As a summary, it omits many details that could be important to particular cases or questions. In addition, court decisions ordinances and statutes adopted after we material preparation of this may alter its accuracy, completeness or applicability. Therefore, citizens should use this material as a general reference only.

<sup>2</sup> *Snyder v. City of Lakewood*, 189 Colo. 421, 542 P.2d 371 (1975) (site-specific rezoning), *Reynolds v. City Council of the City of Longmont*, 680 P.2d 1350 (Colo. App. 1984) (subdivision plat)

<sup>3</sup> *Jafay v. Board of County Commissioners of Boulder County*, 848 P.2d 892, 898 (Colo. 1993)

<sup>4</sup> Gerald E. Dahl, Advising Quasi-Judges: Bias, Conflicts of Interest, Prejudgment, at Ex Parte Contacts, *The Colorado Lawyer*, Vol. 33, No. 3 [Page 69], March 2004

the record of the proceeding. If there is an appeal of the Town Board's decision, the reviewing court will look to see if evidence in the record supports the Town Board's decision.

#### Can I Speak to My Elected Officials?

Town Board members are free to discuss legislative matters with citizens at any time. However, Town Board members should not receive evidence or argument on a pending quasi-judicial matter outside of the official public hearing on the matter. It is inappropriate for the Town Board member to discuss or read correspondence concerning the quasi-judicial matter outside of the public hearing.

#### What Is Ex-Parte Communication?

Information received outside of the public hearing is "ex-parte communication". Courts generally hold that such communication is improper and may provide legal grounds for overturning a decision. This rule against ex-parte communication ensures impartial decisions by requiring disclosure of all evidence and argument presented to the decision maker. The rule also gives everyone involved a fair chance to respond to all evidence and argument that may affect the decision. You would not want a judge to take evidence from any party outside of the trial proceeding. The rule is similar for the Board of Trustees.

Ex-parte communication means any oral, written, electronic or graphic communication with a Town Board member about a quasi-judicial matter that may directly or indirectly relate to the matter and that could influence the disposition of the matter -- except communications made in the public hearing on the quasi-judicial proceeding.

#### How Do I Take Part in the Process?

If you wish to express your opinion or communicate information on a quasi-judicial decision, you have only to appear and state your case at the appropriate time at the public hearing, according to applicable procedures. If you have any questions about the applicable procedures or how or when you may make your views known, contact:

Town Clerk's Office  
650 Holbrook Street  
Erie, CO 80516  
PHONE: (303) 926-2731  
FAX: (303) 926-2798  
[nparker@erieco.gov](mailto:nparker@erieco.gov)

or

Department of Community Development  
650 Holbrook Street  
Erie, CO 80516  
Phone: (303) 926-2770  
Fax: (303) 926-2706  
[hsawyer@erieco.gov](mailto:hsawyer@erieco.gov)

#### If I Cannot Attend the Hearing, How Can I Convey My Thoughts or Concerns to the Decision-Makers?

Generally, you may submit your thoughts or concerns in written form to Town staff for inclusion in the public record. Town staff conveys this information to the Town Board, either with their agenda packets or at the public hearing. Due to time and duplication limitations, documents should be submitted to staff no later than seven (7) business days prior to a public hearing.